

### **REMARKS/ARGUMENTS**

Applicant has received and carefully reviewed the Office Action mailed November 25, 2009. Currently, claims 20, 22, 24-26, 34-37, and 39-44 are pending and have been rejected. Applicant respectfully traverses all adverse assertions and rejections presented in the Office Action. Favorable consideration of the following remarks is respectfully requested.

#### ***Claim Rejections – 35 USC § 102***

Claims 20, 22, 24-26, 34-36, and 39-44 were rejected under 35 U.S.C. §102(a) as anticipated by Ravenscroft et al. (U.S. Patent No. 6,007,558). After careful review, Applicant must respectfully traverse this rejection.

Applicant notes that the Examiner has previously acknowledged that Ravenscroft et al. fail to disclose a filtering device comprising a plurality of struts having a weakened or reduced cross-sectional area region being configured to fail, releasing the anchoring member from a stem portion (see Office Actions dated 8/23/07, 4/22/08, 11/25/08, and 5/27/09). While the Examiner may change her interpretation of a reference, the disclosure (or lack thereof) of Ravenscroft et al. has not changed.

In the current Office Action, the Examiner now asserts that Ravenscroft et al. discloses this claimed limitation (and/or similar limitations). In particular, the Examiner has stated “that although Ravenscroft et al. disclose that the weakened regions 30 flex due to a withdrawal force or a specific load, they may also be “configured to fail” or “configured to break” when a more substantial or repeated force is applied to these regions. The specified amount of force or “retrieval force” required to break the regions is not explicitly defined by the applicant, and it is possible for the weakened regions of Ravenscroft et al. to break due to a certain amount of force, and therefore meets the limitations of the claim.” Applicant respectfully disagrees, as Ravenscroft et al. do not appear to discuss the application of “a more substantial or repeated force” to break the hooks off of the struts. Applicant submits that Ravenscroft et al. appear to disclose a removal force will cause the filter to deflect and pull free of the endothelium layer. Increasing that force, or repeating the application of the force, as proposed in the Office Action, would not appear to provide the claimed limitation(s).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)...“The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP 2131).

In contrast to the Examiner’s present assertion, Ravenscroft et al. do not disclose that the hooks are configured to fail or break. Ravenscroft et al. appear to go into great detail about removing the hooks without injuring the vessel wall. Nowhere do Ravenscroft et al. appear to consider that the hooks may be disconnected or broken off and left in place during filter removal. The Examiner asserts that Figures 1-4 provide some type of support for separating the distal tip of the strut from the filtering device (page 3, section 4 of the Office Action). Applicant respectfully disagrees. Figures 1-4 do not show, nor do they appear to suggest in any way, that Ravenscroft et al. desire, intend, or consider that the anchoring members or hooks may be separated from the struts.

Applicant finds the current rationale for the rejection to be most perplexing. The Examiner has stated: “...it is possible for the weakened regions of Ravenscroft et al. to break” (emphasis added). The Examiner appears to be relying upon the “possibility” of situational forces outside the disclosure of Ravenscroft et al. to support an anticipation rejection under §102. This appears improper since “[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which takes differences into account.” *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

It appears that the Examiner may be attempting to advance the position that the weakened regions are configured to break is inherent to Ravenscroft et al., yet no discussion to support inherency has been presented. Regardless, Applicant notes: [t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)...Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result

from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). (MPEP 2112 IV.). Ravenscroft et al. do not disclose that the weakened regions are configured to fail. Indeed, any material may “fail” if enough force is applied. Ravenscroft et al. do not disclose such forces. Accordingly, it is unclear how one skilled in the art would reach the conclusion that Ravenscroft et al. disclose the claimed limitation(s). “The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)”. (MPEP 2111).

Considering an example using the apparent rationale of the rejection, one could say that it is possible for the cables supporting the Golden Gate Bridge to break (under a certain amount of force, or a repeated force). However, one skilled in the art would not reach the conclusion that simply because it is possible for the cables to break, that the suspension cables are necessarily designed, configured, or intended to break. Nothing in the use, design, or intent of the bridge would support such a conclusion. Applicant believes that the same principle applies to the pending application. The claimed limitation does not necessarily flow from the disclosure of Ravenscroft et al.

As previously acknowledged by the Examiner, Ravenscroft et al. fail to disclose a filtering device comprising a plurality of struts having a weakened or reduced cross-sectional area region being configured to fail, releasing the anchoring member from a stem portion. The filtering device of Ravenscroft et al. releases from the vessel intact by permitting “the hooks to bend and straighten in response to withdrawal forces”. (Abstract; see also col. 2, lines 58-61). The disclosure of Ravenscroft et al. simply does not appear to support the current rejection, either expressly or inherently.

For at least the reasons discussed above, Ravenscroft et al. do not appear to disclose each and every element of independent claims 20, 34, 39, 40, and 43; therefore, Ravenscroft et al. cannot anticipate the claims. Since claims 22, 24-26, 35-36, 41-42, and 44 depend therefrom and add additional elements thereto, Applicants submit that these claims are also not anticipated by Ravenscroft et al. Withdrawal of the rejection is respectfully requested.

***Claim Rejections – 35 USC § 103***

Claim 37 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ravenscroft et al. in view of Ambrisco et al. (U.S. Patent No. 6,007,557). After careful review, Applicant must respectfully traverse the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

Ambrisco et al. do not appear to overcome the deficiencies of Ravenscroft et al. and as applied to claim 34, discussed above, from which claim 37 depends. Accordingly, claim 37 appears to be nonobvious and Applicant respectfully requests that the rejection be withdrawn.

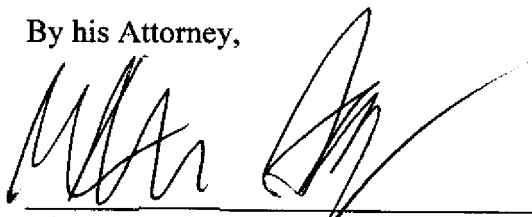
***Conclusion***

In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By his Attorney,



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